

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ANTWAN KEVIN BAKER,

Plaintiff,

v.

CITY OF LAS VEGAS et al.,

Defendants.

Case No. 2:15-cv-01706-RFB-CWH

SCREENING ORDER

Plaintiff, a former Clark County Detention Center inmate who has since been released, has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an application to proceed *in forma pauperis* for non-prisoners and a motion for service of summons. (ECF No. 1, 1-2, 2). Based on the financial information provided, the Court grants Plaintiff leave to proceed without prepayment of fees or costs pursuant to 28 U.S.C. § 1915(a)(1). The Court now screens Plaintiff's civil rights complaint pursuant to 28 U.S.C. § 1915A.

I. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however,

1 must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th
2 Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
3 essential elements: (1) the violation of a right secured by the Constitution or laws of the
4 United States, and (2) that the alleged violation was committed by a person acting
5 under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

6 In addition to the screening requirements under § 1915A, pursuant to the Prison
7 Litigation Reform Act (PLRA), a federal court must dismiss a prisoner's claim, if "the
8 allegation of poverty is untrue," or if the action "is frivolous or malicious, fails to state a
9 claim on which relief may be granted, or seeks monetary relief against a defendant who
10 is immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for
11 failure to state a claim upon which relief can be granted is provided for in Federal Rule
12 of Civil Procedure 12(b)(6), and the court applies the same standard under § 1915 when
13 reviewing the adequacy of a complaint or an amended complaint. When a court
14 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the
15 complaint with directions as to curing its deficiencies, unless it is clear from the face of
16 the complaint that the deficiencies could not be cured by amendment. See *Cato v.*
17 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

18 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
19 *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for
20 failure to state a claim is proper only if it is clear that the plaintiff cannot prove any set of
21 facts in support of the claim that would entitle him or her to relief. See *Morley v. Walker*,
22 175 F.3d 756, 759 (9th Cir. 1999). In making this determination, the court takes as true
23 all allegations of material fact stated in the complaint, and the court construes them in
24 the light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957
25 (9th Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards
26 than formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980).
27 While the standard under Rule 12(b)(6) does not require detailed factual allegations, a
28 plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v.*

1 *Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause
2 of action is insufficient. *Id.*

3 Additionally, a reviewing court should “begin by identifying pleadings [allegations]
4 that, because they are no more than mere conclusions, are not entitled to the
5 assumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal
6 conclusions can provide the framework of a complaint, they must be supported with
7 factual allegations.” *Id.* “When there are well-pleaded factual allegations, a court
8 should assume their veracity and then determine whether they plausibly give rise to an
9 entitlement to relief.” *Id.* “Determining whether a complaint states a plausible claim for
10 relief . . . [is] a context-specific task that requires the reviewing court to draw on its
11 judicial experience and common sense.” *Id.*

12 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed
13 *sua sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This
14 includes claims based on legal conclusions that are untenable (e.g., claims against
15 defendants who are immune from suit or claims of infringement of a legal interest which
16 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
17 fantastic or delusional scenarios). See *Neitzke v. Williams*, 490 U.S. 319, 327-28
18 (1989); see also *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

19 **II. SCREENING OF COMPLAINT**

20 In the complaint, Plaintiff sues multiple defendants for events that took place
21 while Plaintiff was incarcerated at the Clark County Detention Center (“CCDC”). (ECF
22 No. 1-2 at 2). Plaintiff sues Defendants City of Las Vegas, Clark County Detention
23 Center, and State of Nevada. (*Id.*) Plaintiff seeks monetary damages. (*Id.* at 5).

24 The complaint alleges the following: While at the CCDC, Defendants failed to
25 protect Plaintiff and were negligent when they permitted Plaintiff to be beaten and
26 detained by inmates Brian Johnson and Victor Gardner. (*Id.* at 2-3). Gardner had full
27 blown AIDS and caused Plaintiff to contract HIV through blood contact. (*Id.* at 3-4).
28 Prior to August 14, 2014, Plaintiff did not have HIV. (*Id.* at 3).

1 The Court dismisses the complaint in its entirety, without prejudice, with leave to
2 amend. Based on the current allegations, there are not enough facts for the Court to
3 determine whether Plaintiff states a colorable claim for failure to protect. Upon
4 amendment, Plaintiff should follow the directions in the form complaint and “[s]tate the
5 facts clearly, in your own words, and without citing legal authority or argument . . .
6 describe exactly what each specific defendant (by name) did to violate your rights.”

7 Plaintiff should take note of the following law when drafting his amended
8 complaint: Under the Eighth Amendment, prison officials have a duty to protect
9 prisoners from violence at the hands of other prisoners. *Farmer v. Brennan*, 511 U.S.
10 825, 833 (1994). To establish a violation of this duty, the prisoner must establish that
11 prison officials were deliberately indifferent to serious threats to the inmate’s safety. *Id.*
12 at 834. To demonstrate that a prison official was deliberately indifferent to a serious
13 threat to the inmate’s safety, the prisoner must show that “the official [knew] of and
14 disregard[ed] an excessive risk to inmate . . . safety; the official must both be aware of
15 facts from which the inference could be drawn that a substantial risk of serious harm
16 exists, and [the official] must also draw the inference.” *Id.* at 837. Prison officials may
17 not escape liability because they cannot, or did not, identify the specific source of the
18 risk; the serious threat can be one to which all prisoners are exposed. *Id.* at 843.

19 In the amended complaint, Plaintiff should describe exactly what happened
20 between him and the other inmates and identify the jail officials who were aware of the
21 situation. Upon amendment, Plaintiff should take note that Defendants CCDC and the
22 State of Nevada are not viable defendants in a § 1983 civil rights action.¹ Thus, Plaintiff
23 should identify the specific jail officials involved.

24 Plaintiff is granted leave to file an amended complaint to cure the deficiencies of
25 the complaint. If Plaintiff chooses to file an amended complaint he is advised that an

26
27 ¹ The CCDC is an inanimate building, not a person or entity subject to liability.
28 See *Allen v. Clark Cnty. Det. Ctr.*, 2:10-CV-00857-RLH, 2011 WL 197201, *4 (D. Nev.
Jan. 20, 2011). States are not persons for purposes of § 1983. See *Will v. Michigan
Dep’t of State Police*, 491 U.S. 58, 65 (1989).

1 amended complaint supersedes (replaces) the original complaint and, thus, the
2 amended complaint must be complete in itself. *See Hal Roach Studios, Inc. v. Richard*
3 *Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that “[t]he fact that a
4 party was named in the original complaint is irrelevant; an amended pleading
5 supersedes the original”); *see also Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.
6 2012) (holding that for claims dismissed with prejudice, a plaintiff is not required to
7 reallege such claims in a subsequent amended complaint to preserve them for appeal).
8 Plaintiff’s amended complaint must contain all claims, defendants, and factual
9 allegations that Plaintiff wishes to pursue in this lawsuit. Moreover, Plaintiff must file the
10 amended complaint on this Court’s approved civil rights form and it must be entitled
11 “First Amended Complaint.”

12 The Court notes that if Plaintiff chooses to file an amended complaint curing the
13 deficiencies, as outlined in this order, Plaintiff shall file the amended complaint within 30
14 days from the date of entry of this order. If Plaintiff chooses not to file an amended
15 complaint curing the stated deficiencies, the Court shall dismiss this action without
16 prejudice.

17 The Court also denies Plaintiff’s motion for service of summons. (ECF No. 2).
18 The Court shall order service of Defendants when it is procedurally applicable to do so.

19 **III. CONCLUSION**

20 For the foregoing reasons, it is ordered that Plaintiff’s application to proceed in
21 district court without prepaying fees or costs for non-prisoners (ECF No. 1) is granted.

22 It is further ordered that the Clerk of the Court shall file the complaint (ECF No. 1-
23 2).

24 It is further ordered that the complaint (ECF No. 1-2) is dismissed in its entirety,
25 without prejudice, with leave to amend.

26 It is further ordered that if Plaintiff chooses to file an amended complaint curing
27 the deficiencies of his complaint, as outlined in this order, Plaintiff shall file the amended
28 complaint within 30 days from the date of entry of this order.

1 It is further ordered that the Clerk of the Court shall send to Plaintiff the approved
2 form for filing a § 1983 complaint, instructions for the same, and a copy of his original
3 complaint (ECF No. 1-2). If Plaintiff chooses to file an amended complaint, he must use
4 the approved form and he shall write the words "First Amended" above the words "Civil
5 Rights Complaint" in the caption.

6 It is further ordered that if Plaintiff fails to file an amended complaint curing the
7 deficiencies outlined in this order, this action shall be dismissed without prejudice.

8 It is further ordered that the motion for service of summons (ECF No. 2) is
9 denied.

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11 DATED: February 11, 2016.

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15 UNITED STATES MAGISTRATE JUDGE
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